

STATE OF MICHIGAN
DEPARTMENT OF LABOR & ECONOMIC GROWTH
OFFICE OF FINANCIAL AND INSURANCE SERVICES

Before the Commissioner of Financial and Insurance Services

In the matter of

XXXXX

Petitioner

File No. 86821-001

v

IBA Health and Life Assurance Company
Respondent

Issued and entered
this 8th day of February 2008
by Ken Ross
Acting Commissioner

ORDER

I
PROCEDURAL BACKGROUND

On December 19, 2007, XXXXX (Petitioner) filed a request for external review with the Commissioner of Financial and Insurance Services under the Patient's Right to Independent Review Act, MCL 550.1901 *et seq.* The Commissioner reviewed the request and accepted it on January 2, 2008.

The Commissioner notified IBA Health and Life Assurance Company (IBA) of the external review and requested the information used in making its adverse determination. Information was received on December 28 and 31, 2007, from IBA.

The case presented a medical question so the Commissioner assigned it to an independent review organization (IRO) which provided its analysis to the Commissioner on January 15, 2008.

II
FACTUAL BACKGROUND

The Petitioner has varicose veins. She was referred to an in-network vascular physician,

Dr. XXXXX, and underwent sclerotherapy on July 19, August 31, September 6, and October 8, 2007.

Claims for the July 19 procedure were submitted and IBA denied coverage. When the Petitioner appealed, IBA reviewed the claim but upheld its denial. A final adverse determination was issued December 10, 2007.

III ISSUE

Is IBA correct in denying coverage for the Petitioner's July 19, 2007 sclerotherapy?

IV ANALYSIS

Petitioner's Argument

The Petitioner says her condition had become a burden on her life. When a prior surgery to strip the veins did not relieve the pain she sought medical help through injections (sclerotherapy) to collapse the veins.

The Petitioner argues that the first paperwork she received from IBA stated that she owed nothing for the sclerotherapy. After more treatments IBA said that the procedure was cosmetic and, therefore, not covered. The Petitioner questions why coverage was denied for the July 19 treatment while, according to the explanation of benefits statements she received, she owes nothing for the August 31, September 6, and October 8 treatments. Petitioner says that none of her treatments were cosmetic but were undertaken to relieve the pain in her legs.

Respondent's Argument

IBA confirms that services for Petitioner were rendered by Dr. XXXXX on four occasions in 2007: July 19, August 31, September 6, and October 8. IBA says that Petitioner is not responsible paying for the services rendered in August, September, and October because Dr. XXXXX did not obtain prior authorization for the treatment as he should have done. Respondent says it is negotiating payment for those services with Dr. XXXXX.

IBA asserts that its denial of coverage for the July 19, 2007 procedure was correct. The Petitioner's certificate of coverage (the certificate) excludes coverage for cosmetic medical procedures. IBA references this provision in the certificate (page 26):

Section 2: What's Not Covered - Exclusions

* * *

I. Physical Appearance

1. Cosmetic Procedures

"Cosmetic procedures" are defined in the certificate as "[p]rocedures or services that change or improve appearance without significantly improving physiological function. . . ."

IBA says their review of the Petitioner's medical records by an independent vascular physician determined that the Petitioner did not meet the criteria for sclerotherapy and that the treatment was considered to be cosmetic.

IBA further indicates that, under the certificate (pages 6-7), sclerotherapy requires prior notification before services are rendered:

Section 1: What's Covered – Benefits

* * *

Notification Requirements

We require notification before you receive certain Covered Health Services. You are responsible for notifying us before you receive these Covered Health Services.

* * *

Covered Health Services that require prior notification include:

* * *

- Vein ligation, vein stripping and sclerotherapy

IBA says the Petitioner's claims for the sclerotherapy were processed correctly.

Commissioner's Review

The Commissioner has carefully reviewed the arguments of the parties, the certificate of coverage, the IRO report, and other documents submitted by the parties. The Commissioner, in reviewing this case notes that the internal appeal process and the final adverse determination addressed only the July 19, 2007 treatment and, for that reason, only that coverage denial is considered here. It is unclear from the record why Respondent chose to treat the July 19 claim

differently than the other three sclerotherapy treatments. Nevertheless, only the July 19 claim was appealed in Petitioner's request for review.

The question of whether the July 19 procedure was medically necessary was submitted to an IRO for review. The IRO physician reviewing this case is board certified in vascular surgery, holds an academic appointment, and has been in practice for more than eight years.

The IRO reviewer stated that sclerotherapy of spider veins will not address the diffuse swelling and pain that can accompany venous insufficiency. The IRO reviewer also explained that while sclerotherapy has a role in treating larger branch varicosities, this condition was not described in the Petitioner's records. The IRO reviewer concluded that the Petitioner's sclerotherapy was not medically necessary for treatment of her condition. The treatment is considered to be cosmetic and is therefore not a covered benefit under the Petitioner's certificate of coverage.

The Commissioner is not required in all instances to accept the IRO's recommendation. However, the IRO recommendation is afforded deference by the Commissioner; it is based on extensive expertise and professional judgment. The Commissioner can discern no reason why that judgment should be rejected in the present case. Therefore, the Commissioner accepts the findings of the IRO reviewer and finds that the medical necessity of the Petitioner's sclerotherapy treatment on July 19, 2007 has not been established.

V ORDER

The Commissioner upholds IBA Health and Life Assurance Company's adverse determination of December 10, 2007, denying coverage for the Petitioner's sclerotherapy treatment on July 19, 2007.

This is a final decision of an administrative agency. Under MCL 550.1915, any person aggrieved by this Order may seek judicial review no later than sixty days from the date of this Order in the Circuit Court for the county where the covered person resides or in the Circuit Court of Ingham

County. A copy of the petition for judicial review should be sent to the Commissioner of the Office of Financial and Insurance Services, Health Plans Division, Post Office Box 30220, Lansing, MI 48909-7720.